

WORKERS' COMPENSATION INDUSTRIAL COUNCIL/PUBLIC MEETING

May 20, 2021

Minutes of the meeting of the Workers' Compensation Industrial Council/Public Meeting, held virtually via Zoom and in person, on Thursday, May 20, 2021, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 900 Pennsylvania Avenue, 10th Floor Conference Room, Charleston, West Virginia.

Industrial Council Members Present:

Anna Dailey – Chairperson – In Person
Bengy Swanson – Vice Chairperson – via Zoom
Kim Shin – Secretary – via Zoom
Patrick Smith – via Zoom
Jeff Mullins – via Zoom
James A. Dodrill, Insurance Commissioner/Nonvoting Member – via Zoom

1. Call to Order

Chairperson Dailey called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairperson Dailey asked for a motion to approve the February 4, 2021 minutes.

Patrick Smith made the motion to approve the February 4, 2021 minutes. The motion was seconded by Bengy Swanson and passed unanimously.

3. Office of Judges' Report

No one presented the Office of Judges' Report; however, the report was circulated to the board members prior to today's meeting.

4. Board of Review Report

Nick Casey, Chairperson of the Board of Review, presented the Board of Review Report; there were no questions/discussions after the presentation.

5. General Public Comments

There were no speakers and no comments.

6. Public Hearing

Erin Hunter, OIC Deputy Commissioner/General Counsel discussed amendments to Title 85, Series 17 *Electronic Submittal of Invoices and Receipt of Payments* (for workers' compensation claimants and vendors). It was discussed that the Rule was filed for public comment on April 1, 2021 with the Secretary of State's office, as we are required to have a 30 day minimal comment period, however, we had a 40 day public comment period and there were no public comments. The Rule was set for public hearing today (May 20, 2021). Ms. Hunter invited any comments regarding the proposed amendments to Title 85, Series 17. There were no comments on the Rule during the public hearing.

Ms. Hunter asked the Industrial Council to vote to final file this Rule with the Secretary of State's office. She discussed that once it is filed, we are required to have an effective date added to the Rule, as well as the filing date. The effective date must be at least 30 days from the date it is final filed. It was discussed that there are dates in the Rule that talk about things that would happen on or after August 1, 2021, so it was suggested that the Rule be made effective July 1, 2021 so that there could be a month leeway between when the Rule became effective and when some of the internal dates in the Rule became effective. Erin asked for the Industrial Council's permission to final file this Rule some time between now and June 1, 2021, so that it can be made effective on July 1, 2021.

Anna Daily closed the public hearing on the Rule and asked for a motion to approve the Rule and make it effective July 1, 2021. Patrick Smith made the motion to approve the Rule and make it effective July 1, 2021. The motion was seconded by Bengy Swanson and passed unanimously.

7. Old Business

There was no old business to discuss.

8. New Business

Erin Hunter, OIC Deputy Commissioner/General Counsel, discussed an update to 85 CSR 8 and Senate Bill 272 (2021).

Senate Bill 272 passed the legislative session in 2021 (passed on March 11, 2021). It will be in effect 90 days after passage, so it will be effective, in state code, on June 9, 2021.

Ms. Hunter discussed that this bill creates the West Virginia Employment Law Worker Classification Act, which sets forth a new test for the classification of independent contractors and employees and it will supersede any definition of independent contractor otherwise under the laws of this state for workers' compensation, unemployment benefits or for the West Virginia Human Rights Act. This new test for determining independent contractor status is in conflict with the current Rule that we have, which was last updated or promulgated in the summer of 2008 (85 CSR 8). So, in order for our existing workers' compensation Rule to now come in compliance with the new West Virginia Employment Law Worker Classification Act, the Offices of the Insurance Commissioner is asking the Industrial Council to amend Rule 85 CSR 8. Ms. Hunter discussed the draft that was circulated with the Industrial Council of the proposed amendments, in that the majority of this update is to simply bring Rule 85 CSR 8 into compliance with Senate Bill 272, that was just passed this session.

Ms. Hunter asked the Industrial Council to take a vote to put this Rule amendment out for public comment in the same process that was done before and have a public hearing on it at the August 26, 2021 Industrial Council meeting.

Chairperson Dailey asked for a motion to approve for publication and public hearing. The motion was made by Patrick Smith and seconded by Jeff Mullins.

9. Next Meeting

The next meeting is scheduled for Thursday, November 18, 2021 at 1:00 p.m.

10. Executive Session

Chairperson Dailey: The next item on the agenda is an Executive Session to discuss confidential matters related to self-insured employers.

These matters involve discussion of confidential information that meets exceptions under the *West Virginia Public Meetings Act*, and also involves matters that are exempted from disclosure under the *West Virginia Freedom of Information Act*. Therefore, it is appropriate that the discussions take place in Executive Session under the provisions of West Virginia Code §6-9A-4.

If there is any action taken regarding these specific matters it will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Bengy Swanson made the motion to go into Executive Session. The motion was seconded by Jeff Mullins and passed unanimously.

The Industrial Council went into Executive Session to discuss self-insured matters.

Angela Shepherd, Director, Workers' Compensation Self-Insurance, presented the self-insured matters.

Chairperson Dailey called the Industrial Council meeting back to order for the regular public session.

Chairperson Dailey entertained a motion to approve the list of self-insured renewals that have been presented to the Council.

Patrick Smith moved to accept the motion to approve the list. The motion was seconded by Jeff Mullins and passed unanimously.

11. Adjourn

There being no further business, Chairperson Dailey asked for a motion to adjourn. Jeff Mullins made the motion to adjourn the meeting. The motion was seconded by Patrick Smith and passed unanimously.